conferred on him by section 173A(ii)(a) of the Criminal Procedure Code. In my opinion it is just that an order dismissing the third and fourth charges be made and I make an order accordingly under the said provisions of section 173A (ii) (a) of the Criminal Procedure Code. The order of conviction on such charges is therefore set aside and the fines on such charges, if paid, are to be refunded to the appellant.

Order accordingly.

Solicitors for the appellant: *Braddell & Ramani.*

MOH YEE CHONG (f) & ANOR. v. PUBLIC PROSECUTOR

[A. Cr. J. (Thomson J.) April 14, 1955]

[Ipoh — Criminal Appeal No. 20 of 1955]

Criminal law and Procedure — Criminal Procedure Code (Cap. 6), s. 422 — Defective charge although irregular not fatal to subsequent proceedings — Emergency Regulations — Emergency (Rubber Control) Regulations, 1949, reg. 4(1) — Unlawful possession — Onus on prosecution — When onus passes to accused to show possession not unlawful.

The appellants were convicted and sentenced to 3 months imprisonment for unlawful possession of rubber. The charge against each of them read as follows: "That you on 1.1.55 at about 10.20 a.m. at Jalong Tinggi Estate, Sungei Siput North in the State of Perak did have in your possession to wit 95 katties of scrap rubber valued at $28.50, which was fraudulently obtained and that you thereby committed an offence under reg. 4(1) ER (Rubber Control) 1951 and punishable under reg. 5(2) as amended by LN. 536/53."

The evidence against the appellants were that in broad daylight they were riding on their bicycles along the road leading from the estate on which they were then employed as rubber tappers and each of them was carrying on the back of her bicycle a sack containing scrap rubber. They were seen by two police officers who for some purpose or another were hiding in the neighbourhood of the road and they were stopped.

Under the Regulation the charge must be with being in "unlawful possession" of rubber. Counsel for the appellant contended that the charge of "fraudulently" obtaining the rubber was defective and that the convictions were against the weight of evidence.

Held: (1) by reason of s. 422 of the Criminal Procedure Code (Cap. 6) the defect in the charge, although an irregularity, could not possibly be said to have occasioned a failure of justice and therefore it was an irregularity which was not fatal to the subsequent proceedings; (2) for the purposes of the Regulation, unlawful possession of rubber was an offence, and, in the absence of anything further, in any prosecution the onus would lie on the prosecution. But, if the rubber in question is such as might be reasonably suspected of being stolen or fraudulently obtained, then, and on that being established, a *prima facie* case of unlawful possession was made out and the onus then passed to the accused person if he was to avoid conviction of proving that his possession of such rubber was not unlawful. Since the prosecution in this case failed to make out their case or as to pass the burden of proof on to the accused the appeal must succeed.

MAGISTRATE'S CRIMINAL APPEAL.

S. P. Seenivasagam for the appellants.

I. Talog Davies (Federal Counsel) for the respondent.

Thomson J. (delivering oral judgment): — The two appellants in this case were convicted of unlawful possession of rubber in contravention of Regulation 4(1) of the Emergency (Rubber Control) Regulations, 1949, in the Magistrate's Court at Sungei Siput and each sentenced to three months imprisonment. Against these convictions and sentences they have now appealed.

The Regulation reads as follows:—

"Whoever has in his possession, or conveys in any manner, any rubber which may be reasonably suspected of being stolen or fraudulently obtained may be charged with being in unlawful possession thereof, and, unless he satisfies the Court that he was lawfully in possession of such rubber he shall be guilty of an offence . . . . . ."

To my mind, the construction of that Regulation is by no means easy. I think, however, it is to be construed in this way. For the purposes of the Regulation, unlawful possession of rubber is an offence, and, in the absence of anything further, in any prosecution the onus would lie on the prosecution of proving it up to the hilt. But, if the rubber in question is such as may be reasonably suspected of being stolen or fraudulently obtained, then, and on that being established, a *prima facie* case of unlawful possession is made out and the onus then passes to the accused person if he is to avoid conviction of proving that his possession of such rubber was not unlawful.

In the present case, I have to consider both the charges and the evidence which was produced in support of them because on both of these the convictions have been attacked.

I will deal in the first place with the charge which reads as follows in the case of the first appellant:—

"That you on 1.1.55 at about 10.30 a.m. at Jalong Tinggi Estate, Sungei Siput North in the State of Perak did have in your possession to wit 95 katties of scrap rubber valued at $28.50, which was fraudulently obtained and that you thereby committed an offence under Reg. 4(1) ER (Rubber Control) 1951 and punishable under Reg. 5(2) as amended by LN. 536/53."

In this charge '1951' is clearly an error. It should be '1949'. But the point is of no importance. The charge against the second appellant was in similar terms.

I have no hesitation in saying that these charges were defective. It would have been sufficient had they merely averred that the accused was in unlawful possession of rubber. Or they might have set out the matter in more detail and stated that the accused was in possession of rubber which was reasonably suspected of being stolen or fraudulently obtained and was thereby in unlawful possession of it. I think, however,

that though the charges were to some extent defective I am bound to hold by reason of Section 422 of the Criminal Procedure Code that the defect although an irregularity could not possibly be said to have occasioned a failure of justice and therefore that it was an irregularity which was not fatal to the subsequent proceedings. The accused clearly had full information as to what was charged against them and I do not see how they could possibly have been misled. On the ground of the charge being defective, therefore, the appeal must fail.

With regard to the evidence, however, the case is otherwise. The evidence against the two appellants is that in broad daylight they were riding on their bicycles along the road leading from the estate on which they are employed as rubber tappers and each of them was carrying on the back of her bicycle a sack containing a large quantity of scrap rubber. They were seen by two Police Officers who for some purpose or another were in hiding in the neighbourhood of the road and they were stopped. There was nothing more. It is true that at the trial they told some of the silliest lies that have ever been told in a Magistrate's Court in this country. But this is beside the point. To my mind, they should never have been put upon their defence.

I am not prepared to discuss the nature or the quantum of the evidence that is necessary to establish the condition which effects a reversal of the onus of proof under the Regulation, that is, that the rubber must be reasonably suspected of being stolen. I am inclined to think very little evidence will suffice to do so. But there must be something objective, some circumstances which the Court of trial accepts as being sufficient in all the circumstances of the case to create a reasonable suspicion. In this case there was nothing of the sort.

Accordingly, I must hold that the Prosecution did not make out their case and they did not take it to the stage where the onus of proof passed to the accused persons.

The appeal, therefore, must succeed.

The convictions are set aside and in each case an order of acquittal and discharge entered.

Appeal allowed.

Solicitors for the appellants: *S. Seenivasagam & Sons.*

ABDUL SALAM v. PUBLIC PROSECUTOR

[A. Cr. J. (Thomson J.) April 20, 1955]

[Ipoh — Criminal Appeal No. 18 of 1955]

Food Control Proclamations, 1945 — Ration Documents Regulations, 1948, regs. 5(1) and 15(d) — Ration cards — Retention by store-proprietor without Controller's consent — Whether contrary to reg. 15(d).

The appellant, a provision store-proprietor, was convicted and sentenced to a fine of $1,000 or 4 months imprisonment in default of payment, for retaining 22 ration cards belonging to his registered customers without a written consent from the Asst. Controller of Supplies, an offence under reg. 15(d) of the Ration Documents Regulations.

The terms of the Ration Documents Regulations provide for regulating the retail sale of certain foodstuffs by means of a system of ration cards. Reg. 5 reads as follows: "A ration document shall be available for lawful use only — (i) when retained or used by or on behalf of the person to whom it is issued and for the purpose of obtaining rationed food for him or on his behalf: provided that it may not be retained by a retailer except with the written consent of the Controller of Supplies; (ii) while such person is living and is in the Federation." By reg. 7 every ration document remains the property of the Food Controller "but the person to whom a ration document is issued shall be entitled to its custody and shall be responsible for its safe custody." The regulation under which the appellant was convicted reads as follows: "15. A person shall not: . . . . . (d) retain any such ration document when he has no right to retain it or fail to comply with any directions with regard thereto; . . . . . "

Held: although reg. 5(1) prohibits retention by a retailer without a written consent of the Controller of Supplies, reg. 7 does not prohibit the person to whom the ration document is issued to entrust its custody to another person. Therefore the bare retention of ration cards by a retailer with the knowledge and consent of the holders is no offence under the Regulations.

MAGISTRATE'S CRIMINAL APPEAL.

Meera Hussain for the appellant.

I. Talog Davies (Federal Counsel) for the respondent.

Thomson J. : — The appellant in this case was convicted in the Magistrate's Court at Sungei Siput of an offence in contravention of the Ration Documents Regulations, 1948, made in pursuance of the Food Control Proclamation, 1945, and sentenced to a fine of $1,000 or 4 months imprisonment in default of payment. Against that conviction and sentence he has now appealed.

The relevant facts are not in dispute. The appellant is a shop-keeper who sells retail rice which, I am told, is a rationed food. On 5th November, 1954, his premises were visited by a Food Control Inspector and he was found to be in possession of twenty-one Ration Cards belonging to customers residing in the same village.

The charge was in the following terms:

"That you on 5.11.54 at about 11.20 a.m. being the proprietor of the Medinah Store, 305 Jalong New Village, Sungei Siput, licensed to deal in controlled foodstuffs, to wit rice, did retain 22 (twenty-two) ration cards belonging to your registered customers without a written consent from the Asst. Controller of Supplies, Perak, as per Reg. 5(1) of the Ration Documents Regulations No. 66/48 as amended by L.N. 226 of 14.4.54, and that you did thereby commit an offence under Reg. 15(d) of